

§ 101-40.707-2 Transportation for account of the Government.

Determination of liability for discrepancies shall be the responsibility of the Government agency paying the transportation charges (a) in all instances where a shipment is made on a Government bill of lading, commercial bill of lading to be converted to a Government bill of lading, commercial bill of lading bearing a notation that charges will be borne by the U.S. Government, commercial bill of lading under commercial forms and procedures for small shipments (see §101-41.304-2), or purchase order for local drayage, and (b) in other instances where the Government assumes the risk for loss and damage at origin; e.g., when property is purchased f.o.b. origin, freight prepaid. While no precise formula can be prescribed for agencies to follow in determining whether liability for loss and damage rests with the carrier, the shipper, or a third party, an analysis shall be made of all the pertinent factors and circumstances involved, including, when appropriate, consideration of the following:

- (1) Type and adequacy of the packing and packaging.
- (2) Adequacy of marking, including precautionary markings for fragile or dangerous cargo.
- (3) Condition of the package, including any indications of rough handling or pilferage.
- (4) In case of load lots:
 - (i) Condition of the vehicle, whether dirty, contaminated, unsafe, structurally defective, appropriate type, etc.;
 - (ii) Identification and condition of seals on conveyances and by whom applied;
 - (iii) Manner of loading, stowing, blocking, and bracing; and
 - (iv) Determination as to whether loading was performed by shipper or carrier.
- (5) Tally records and how compiled.
- (6) Photographic evidence.
- (7) Expert or professional appraisals.

[32 FR 8965, June 23, 1967, as amended at 42 FR 25861, May 20, 1977]

§ 101-40.708 [Reserved]

§ 101-40.709 Time limitations for filing claims.

Government agencies shall take prompt action to recover amounts due the United States as a result of discrepancies in delivery, in accordance with time limitations established by the bill of lading or other contracts of carriage, or by statute. The following are examples of such time limitations:

(a) *Domestic shipments.* (1) Claims for loss or damage to shipments transported by carriers subject to the Revised Interstate Commerce Act (49 U.S.C. 10101, *et seq.*, Pub. L. 95-473, October 17, 1978, as amended) shall be filed within the specified limits required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto. Pursuant to 49 U.S.C. 11707(e), bills of lading normally issued by rail and motor carriers specify that written claim be made upon the carrier within 9 months after delivery of property damaged or within 9 months following the time when delivery of property should have been made, and that suit shall be instituted within 2 years from the date the carrier or its agent notifies the claimant in writing that the specified claim is disallowed in whole or in part. Neither limitation is applicable to shipments made on Government bills of lading, or commercial bills of lading to be converted to Government bills of lading, or commercial bills of lading subject to the terms of the Government bill of lading. (See §101-41.302-3(g) for exemption authority.)

(2) Claims for loss or damage to shipments moving by domestic air carriers shall be filed within the limits prescribed on individual carrier's air waybills.

(b) *Ocean shipments.* The Carriage of Goods by Sea Act (46 U.S.C. 1303(6), as amended) imposes a 1-year limitation for bringing court action against ocean carriers for loss or damage.

(c) *International air shipments.* Complaints of loss or damage shall be submitted in writing to the international air carrier within the following time limits set by Article 26 of the Warsaw Convention (49 Stat. 3020, as amended):